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10/791,589	03/02/2004	Glenn Klecker	DBH:0756.0840	3452
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CHERNOFF, VILHAUER, MCCLUNG & STENZEL			PRONE, JASON D	
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/791,589	<b>Applicant(s)</b> KLECKER ET AL.
	<b>Examiner</b> Jason Prone	<b>Art Unit</b> 3724

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If no period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED. (35 U.S.C. § 133).

Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 14 January 2008.

2a) This action is FINAL.      2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 2-8,10,11,15-19,22,28-31,33 and 34 is/are pending in the application.

4a) Of the above claim(s) 28-31 and 33 is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 2-8,10,11,15-19,22 and 34 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on 14 January 2008 is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All    b) Some \* c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) Notice of References Cited (PTO-892)

2) Notice of Draftperson's Patent Drawing Review (PTO-948)

3) Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date 1-14-08

4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_

5) Notice of Informal Patent Application

6) Other: Appendix A

**DETAILED ACTION**

***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 5-7, 11, and 34 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In claim 11, the phrase "said blade safety lock engages one of said jaw and blade assembly" is unclear. The blade safety lock supported by the specification and Figures only engages the jaw. So it is unclear what structure allows the safety lock to engage the blade assembly. The term "one of" is what makes the phrase unclear. There is no support for the blade safety lock being engaged by the blade assembly, so how can it be engaged by one of the blade assembly and jaw when it is only engaged by the jaw? Also, in claim 11, the phrase "said blade safety lock being arranged with respect to one of said handles so that said one of said handles urges said blade lock into said engaged position when said one of said handles approaches said folded position" is unclear. The blade safety lock supported by the specification and Figures is only arranged with respect to the handle that attaches to the blade assembly (in this case, second handle). It is unclear what structure would allow the first handle to perform an urging function to the blade lock. The term "one of" is what makes the phrase unclear. There is no support for the blade safety lock being urged by the 1<sup>st</sup> handle, so how can it be urged by one of the handles when it is only urged by the 2<sup>nd</sup> handle? Basically the blade safety lock is engaged by

only one structure and urged by only one structure, but the claim gives two possible structures to urge and engage this blade safety lock.

3. Regarding claims 5 and 6, the phrase "rubber-like" renders the claim(s) indefinite because the claim(s) include(s) elements not actually disclosed (those encompassed by "rubber-like"), thereby rendering the scope of the claim(s) unascertainable. See MPEP § 2173.05(d).

***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

5. Claims 15-19 are rejected under 35 U.S.C. 102(e) as being anticipated by Hung et al. (2004/0010924). See Appendix A for added numerals.

**Claims 15, 16, and 19:**

In regards to claim 15, Hung et al. disclose the same invention including a jaw having a base (13), a blade (23) defining a blade plane (Plane a) and including a blade base having a tang (portion that extends from 14 to 22) parallel with the blade plane (Plane b), a blade pivot joint interconnecting the jaw with the blade (14), the blade being movable about the pivot joint with respect to the jaw between an open and closed position (Figs. 2 and 6), a first handle (20 and 50) including an abutment face (in Fig. 2,

the portion nearest 132 on 10 but the equivalent on 20), a second handle attached to the base of the jaw (10 and 40), a first handle pivot joint interconnecting the first handle with the tang (22), the first handle being movable about the handle pivot joint between an extended position and a folded position (Figs. 2 and 7), a leg (1000a) attached to and extending laterally from the tang in a plane normal to the blade plane (Plane c) and engaged against the abutment face when the first handle is in the extended position (1000a, see 1000b for equivalent view).

In regards to claim 16, Hung et al. disclose the first handle includes a channel having a channel base and a pair of side walls (Fig. 3) and the abutment face is a part of the channel base and the leg extends along and in contact with the abutment face when the first handle is in the extended position (Fig. 2).

In regards to claim 19, Hung et al. disclose the first handle includes a channel having a pair of side walls and a channel base defining the abutment face (Fig. 3), the tang includes a main portion (in Fig. 2, in-between 241 and 22) and the leg extends laterally at an angle away from the main portion and is aligned with the abutment face and rests against the abutment face when the first handle is in the extended position (Fig. 2).

Claims 17 and 18:

In regards to claim 17, Hung et al. disclose the same invention including for paragraphs (a)-(f) see rejections to claims 15, 16, and 19 above. In regards to 17(g), Hung et al. disclose a leg (1000a) extending laterally away from the tang and being oriented parallel with one of the side walls (Plane c) and the leg oriented being parallel

with the channel base and extending along and being engaged against and in contact with the abutment face when the first handle is extended (1000a, see 1000b for equivalent view).

In regards to claim 18, Hung et al. disclose the tang and the leg are included in a single piece of metal and the leg is a portion of the single piece located in a plane oriented at an appropriate angle to a plane including the tang to align with the abutment face (Fig. 2).

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

7. Claims 2-4 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hung et al. in view of Thompson et al. (5,483,747). In regards to claims 2 and 3, Hung et al. disclose the invention including paragraphs (a) and (c)-(e) (see rejection to claims 15-19 above).

In regards to claim 4, Hung et al. disclose the jaw is a bypass support jaw and the cutter is a bypass cutting blade arranged to cooperate with the jaw (13 and 23) and is capable of pruning (Fig. 2).

However, with regards to claims 2(b) and 8, Hung et al. fail to disclose the blade assembly includes a blade carrier having a tang and a sharpened cutter mounted removably mounted on the blade carrier, the blade pivot joint includes a tension screw

and locknut adjustable engaged therewith, and the screw and locknut being arranged to keep the blade assembly and the jaw closely alongside each other.

Thompson et al. teach it is old and well known in the art of shears to incorporate a blade assembly that includes a blade carrier (40a) having a tang (60) and a sharpened cutter mounted removably mounted on the blade carrier (47), the blade pivot joint includes a tension screw (50) and locknut adjustable engaged therewith (57), and the screw and locknut being arranged to keep the blade assembly and the jaw closely alongside each other (Fig. 3). Therefore, one of ordinary skill in the art, at the time of the invention, to have provided Hung et al. with the blade assembly, as taught by Thompson et al., because all the claimed elements were known in the prior art and one skilled in the art could have combined the elements as claimed by known methods with no change in their respective function and the combination would have yielded predictable results.

8. Claims 5-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hung et al. in view of Thompson et al. as applied to claim 2 above, and further in view of Gringer et al. (2004/0045167). Hung et al. in view of Thompson et al. disclose the invention including each of the handles defines a respective channel having a pair of channel side walls (Fig. 3 in Hung et al.), the channels facing inwardly toward each other when in their folded position (Fig. 7 in Hung et al.) and facing outwardly apart from each other when in the extended positions with respect to the jaw and blade (Fig. 6 in Hung et al.), and one of the channel side walls includes a supporting portion of metal

and a molded shell layer of a rigid thermoplastic material (paragraph [0026] in Hung et al.).

However, Hung et al. in view of Thompson et al. fail to disclose the side walls include cushioning portion of a resiliently soft rubber-like elastomeric material overlying and extending along covering a margin and the cushioning portions are molded onto the shell layer/side walls.

Gringer et al. teach it is old and well known in the art of tool handles to incorporate side walls that include cushioning portions of a resiliently soft rubber-like elastomeric material overlying and extending along covering a margin and the cushioning portions are molded onto the shell layer/side walls (abstract). Gringer et al. disclose a soft molded elastomeric material which is rubber-like. Therefore, one of ordinary skill in the art, at the time of the invention, to have provided Hung et al. in view of Thompson et al. with cushioning portions, as taught by Gringer et al., because all the claimed elements were known in the prior art and one skilled in the art could have combined the elements as claimed by known methods with no change in their respective function and the combination would have yielded predictable results.

Claims 11 and 34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hung et al. in view of Thompson et al. Hung et al. in view of Thompson et al. disclose the invention including a blade safety lock movable between an engaged position and a disengaged position (24 in Hung et al.), the lock being arranged with respect to one of the handles so that the handle urges the blade lock into the engaged position when the handle approaches the folded position (Fig. 7 in Hung et al.), the

safety lock includes a catch body (24 in Hung et al.), the catch body defining an opening (24 in Hung et al.), the blade carrier has a pin projecting from the tang (241 in Hung et al.), and the pin being engaged in the opening and limiting rotational motion of the catch body (241 in Hung et al.).

However, However, Hung et al. in view of Thompson et al. fail to disclose the safety lock is carried on one of the handle pivot joints.

The examiner takes Official notice that one of ordinary skill in the art, that it would have been obvious to construct that apparatus so as to put the safety lock on the same pivot as the handle. Therefore, one of ordinary skill in the art, at the time of the invention, to have provided Hung et al. in view of Thompson et al. with the safety lock sharing a pivot with the handle to reduce the amount of parts used for construction and because a person of ordinary skill has good reason to pursue the known options within technical grasp. If this leads to the anticipated success, it is likely the product is not of innovation but of ordinary skill and common sense.

9. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hung et al. in view of Thompson et al. and Mizutani et al. (2002/0124415). In regards to paragraphs (a) and (c)-(e), Hung et al. disclose the invention (see rejection to claims 2-4 and 8 above).

In regards to paragraph (b), the combination of Hung et al. in view of Thompson et al. discloses the invention (see rejection to claims 2-4 and 8 above). Therefore, one of ordinary skill in the art, at the time of the invention, to have provided Hung et al. with the blade assembly, as taught by Thompson et al., because all the claimed elements

were known in the prior art and one skilled in the art could have combined the elements as claimed by known methods with no change in their respective function and the combination would have yielded predictable results.

In regards to (e), Hung et al. disclose the invention including a spring urging the jaw and the blade assembly to pivot apart from each other (30).

However, Hung et al. fail to disclose the jaw defining a cavity surrounding the blade pivot joint and a groove extending away from the cavity, the spring located in the cavity, the spring having a pair of ends, a first end extending into the groove and being engaged with the jaw, and the other end extending to towards the second handle pivot joint and being engaged with the tang of the blade carrier.

Mizutani et al. teach that it is old and well known in the art of shears to incorporate a cavity surrounding the blade pivot joint (5) and a groove extending away from the cavity (11), a spring located in the cavity (15), the spring having a pair of ends (16), a first end extending into the groove and being engaged with the jaw (11), and being engaged with the tang of the blade carrier (the end labeled as 16). The combination of Hung et al. in view of Mizutani et al. clearly disclose an end of the spring extending from the cavity to a handle pivot joint. Therefore, one of ordinary skill in the art, at the time of the invention, to have provided Hung et al. with a spring cavity, as taught by Mizutani et al., because the substitution of one known element for another would have yielded predictable results.

10. Claim 22 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hung et al. in view of Mizutani et al. With regards to paragraphs (a)-(e), Hung et al. discloses

the invention (see rejection to claims 15-19 above). With regards (f), the combination of Hung et al. in view of Mizutani et al. discloses the invention (see rejection to claim 10 above).

***Response to Arguments***

11. Applicant's arguments filed 14 January 2008 have been fully considered but they are not persuasive. Leg 1000a labeled in Appendix A, which can be seen better at equivalent 1000b) clearly extends laterally away from the tang and extends normal to plane b. Gringer et al. teaches it is old and well known in the art of tool handles to apply an elastomeric coating to a handle. It would have been obvious to one skilled in the art to have applied this material to any tool handle including the channel handle of Hung et al. With regards to claims 10 and 22, using Figure 6 of Mizutani et al. anchoring holes clearly extend into the page in a direction away from the cavity. A hole can be considered a groove. The hole is an indentation in the tool. It may be an indentation that extends all the way through the tool but nonetheless is an indentation. The combination of Hung et al. in view of Mizutani et al. clearly disclose an end of the spring extending from the cavity to a handle pivot joint.

***Conclusion***

12. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Klecker.

13. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jason Prone whose telephone number is (571)272-4513. The examiner can normally be reached on 7:30-5:00 (M-F).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Boyer D. Ashley can be reached on (571) 272-4502. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a

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USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

27 March 2008

*/Jason Prone/*

Primary Examiner, Art Unit 3724

Appendix A

